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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,471	08/27/2003	Osamu Nozaki	9948-6US (PAA-268)	5372

570 7590 11/06/2007  
AKIN GUMP STRAUSS HAUSER & FELD L.L.P.  
ONE COMMERCE SQUARE  
2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103

EXAMINER
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NAFF, DAVID M

ART UNIT	PAPER NUMBER
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1657

MAIL DATE	DELIVERY MODE
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11/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/649,471

**Applicant(s)**

NOZAKI ET AL.

**Examiner**

David M. Naff

**Art Unit**

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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#### DETAILED ACTION

The final rejection of 7/3/07 is withdrawn, and prosecution on the merits is reopened in view of new prior art applied.

A response of 9/24/07 presented arguments, and did not amend the claims.

Claims examined on the merits are 3 and 11, which are all claims in the application.

#### *Specification*

The disclosure is objected to because of the following informalities: the description of Figure 1 (bridging pages 3 and 4) does not define S1 and S2 contained by Figure 1.

Appropriate correction is required.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Nozaki et al (Luminescence 2000) (newly applied).

The claims are drawn to a device for determining hydrogen peroxide in body fluid. The device contains a first mobile phase passage containing a chromatography pump and an auto-sampler, a second mobile phase passage containing a chromatography pump, a flow passage

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which joins the first and second mobile phase passages, and a chemilumimeter connected to the flow passage. The chemiluminometer contains a flow cell in which a horseradish peroxidase immobilized stationary phase is packed.

Nozaki et al disclose determination of hydrogen peroxide by micro-flow injection-chemiluminescence using a coupled flow cell reactor chemiluminometer. Figure 2 (page 139) of Nozaki et al shows a flow injection-chemiluminescence system that is the same as the device shown by Figure 1 of the present specification. See Nozaki et al, paragraph bridging pages 138 and 139, and page 139, left column, under "Assay of  $H_2O_2$ ", where Figure 2 is described. The system shown by Figure 2 of Nozaki et al for hydrogen peroxide determination is the same as the device presently claimed for hydrogen peroxide determination. The body fluid, solution of imidazoles and alkaline buffer, and reaction required in last four lines of claim 3 are involved in a process of using the claimed device, and do not make the claimed device different from the system disclosed by Nozaki et al. The system disclosed by Nozaki et al is inherently capable of performing a process requiring a body fluid, solution of imidazoles and alkaline buffer, and reaction as required by the present claims.

While the authors of Nozaki et al are the inventors of the present invention, Nozaki et al is a statutory bar due to being published more than one year before filing the present application.

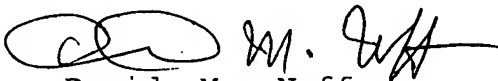
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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is 571-272-0920. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private AIR system, contact the Electronic Business Center (EBC) at 866-217-197 (toll-free). If you would like assistance from a USPTO Customer service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
David M. Naff  
Primary Examiner  
Art Unit 1657